

**PROGRAMMATIC AGREEMENT AMONG
THE FEDERAL HIGHWAY ADMINISTRATION,
THE IOWA DEPARTMENT OF TRANSPORTATION,
THE IOWA STATE HISTORIC PRESERVATION OFFICER,
AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING
IMPLEMENTATION OF FEDERAL-AID TRANSPORTATION PROJECTS IN THE
STATE OF IOWA**

WHEREAS, the Federal Highway Administration (FHWA), under the authority of 23 U.S.C. 101 et seq., implements the Federal-aid Highway Program (Program) in the State of Iowa by funding and approving state and locally sponsored transportation undertakings or programs, hereafter referred to as projects, that are administered by the Iowa Department of Transportation (Iowa DOT); and

WHEREAS, the Iowa FHWA Division Administrator is the “Agency Official” responsible for ensuring that the Federal-aid Highway Program in the State of Iowa complies with Section 106 of the National Historic Preservation Act (NHPA, *54 U.S.C. § 306108*), as amended, and codified in its implementing regulations, 36 CFR Part 800, as amended (August 5, 2004); and

WHEREAS, the Iowa DOT, as authorized by Title 23 U.S.C. 302, administers projects throughout the State of Iowa that are carried out with FHWA financial assistance or require an FHWA permit or approval, and the Iowa DOT has participated in the consultation and has been invited to be a signatory to this Agreement; and

WHEREAS, the Iowa DOT, to the extent practicable, is committed to the preservation and protection of the historic heritage of the State of Iowa in the design, construction, reconstruction, relocation, repair, and maintenance of roads, streets, and highways (Code of Iowa 314.14); and

WHEREAS, the responsibilities of the Iowa State Historic Preservation Officer (SHPO) under Section 106 of the NHPA and 36 CFR Part 800 are to advise, assist, review, and consult with Federal agencies as they carry out their historic preservation responsibilities and to respond to Federal agencies’ requests within a specified period of time; and

WHEREAS, the FHWA has determined that implementation of the Program in Iowa in connection with the National Environmental Policy Act (NEPA) may have an effect upon properties included in, or eligible for inclusion in, the National Register of Historic Places (NRHP), hereafter referred to as historic properties, and has consulted with the SHPO and the Advisory Council on Historic Preservation (ACHP) pursuant to 36 CFR 800.14(b) of the regulations implementing Section 106 of the NHPA; and

WHEREAS, pursuant to the consultation conducted under 36 CFR 800.14(b), the signatories have developed this Programmatic Agreement (Agreement) to establish an efficient, effective, and streamlined program alternative for taking into account the effects of the Program on historic properties in Iowa and for affording the ACHP a reasonable opportunity to comment on projects covered by this agreement; and

WHEREAS, the FHWA has notified the public and Federally recognized Indian tribes (Tribes/Nations – Appendix A) with historic, ancestral and ceded land connections to Iowa about this Agreement, has requested their comments, and has taken any comments received into account; and

WHEREAS, the University of Iowa Office of the State Archaeologist and Preservation Iowa have been offered concurring party status to this Agreement;

NOW, THEREFORE, the FHWA, SHPO, ACHP, and Iowa DOT agree that the Program in Iowa shall be carried out in accordance with the following stipulations in order to take into account the effects of the Program on historic properties in Iowa and that these stipulations shall govern compliance of the Program with Section 106 of the NHPA until this Agreement expires or is terminated.

STIPULATIONS

The FHWA, assisted by Iowa DOT, will ensure that the following measures are carried out:

I. Purpose and Applicability

This Agreement sets forth the process by which the FHWA will meet its responsibilities under Section 106, 110(d), and 110(f) of the NHPA, with the assistance of Iowa DOT, for all FHWA projects implemented through the Iowa DOT. This Agreement establishes the basis for considering the effects of FHWA projects on historic properties and establishes alternative procedures to implement Section 106 for the review of such projects by the FHWA, Iowa DOT, SHPO, and ACHP.

II. Definitions

The definitions listed in 36 CFR 800.16 are applicable and agreed upon by all parties to this agreement.

III. Responsibilities of the FHWA and Iowa DOT

A. In compliance with its responsibilities under the NHPA, and as a condition of its award of any assistance for, or permitting of, projects under the Federal-aid Highway Program, the FHWA shall require the Iowa DOT to carry out the obligations of this Agreement and applicable ACHP policies and guidelines for all transportation projects implemented through the Iowa DOT for which the FHWA is the lead agency pursuant to 36 CFR 800.3(a)(2) and 800.2(a)(4). Through this Agreement, the FHWA authorizes the Iowa DOT to initiate and, in most cases,

conclude consultation with the SHPO and other consulting parties for purposes of compliance with Section 106 of the NHPA.

1. This authorization does not preclude the FHWA's right to intervene and take the lead in consultation among the Iowa DOT, SHPO, and other consulting parties; or to consult with Indian Tribes and Nations on a government-to-government basis consistent with the provisions of Stipulation III. When the FHWA intervenes, it may either carry out consultation in accordance with the procedures in this Agreement or follow the procedures in 36 CFR Part 800.3 - 800.6.
 2. Because the FHWA is legally responsible for all findings and determinations made under this Agreement, no assistance or approval will be made by the FHWA if there are any unresolved consultation issues with the SHPO and other consulting parties. If the FHWA does not approve the outcome of consultation for a specific project, the FHWA may require Iowa DOT to provide additional information or to perform additional consultation, or the FHWA may consult directly with the SHPO and other consulting parties, if any, to complete Section 106 review process to its satisfaction.
- B. Cooperating federal agencies with concurrent and affiliated projects may recognize the FHWA as the lead agency for the purposes of fulfilling their collective obligations under Section 106 of the NHPA in accordance with 36 CFR 800.2(a)(2), provided that: 1) the FHWA agrees to the lead agency designation; 2) the cooperating agency follows the requirements of this Agreement; 3) the projects have shared timing and development and, 4) the cooperating Federal agency's project does not have the potential to cause effects to historic properties beyond those considered by the FHWA and Iowa DOT.
- C. This Agreement shall not apply to projects that occur on or affect tribal lands as they are defined in Section 301(14) of the NHPA and 36 CFR 800.16(x). Tribal lands are all lands within the exterior boundaries of any Indian sovereign lands, and all dependent Indian communities. For such projects, the FHWA shall follow the procedures in 36 CFR Part 800.
- D. All actions prescribed by this Agreement that involve the identification, evaluation, analysis, recording, treatment, monitoring, or disposition of cultural resources (i.e., properties, usually greater than 50 years old, that are, or may be, eligible for listing in the NRHP) , or that involve the reporting or documentation of such actions in the form of reports, forms, or other records, shall be carried out by or under the direct supervision of a person or persons who meets the Secretary of the Interior's Professional Qualifications Standards for Archaeology, Architectural History, or History (published in 48 FR 44738-44739).

- E. The Iowa DOT shall employ personnel, in the Office of Location and Environment (OLE) or its successor designated by the Iowa DOT administration, with training, experience, or qualifications to apply the Secretary of the Interior's Standards for archaeology, history, and architectural history in consultation regarding an project's effects on historic properties (Appendix A, 36 CFR 61). Except on such occasions when the FHWA elects to consult directly with the SHPO or the ACHP, all consultation with the SHPO under this Agreement and decisions made under Stipulation VI shall be performed by the Iowa DOT OLE per Iowa DOT Standard Specification 2102.03J and Iowa DOT PPM 500.17 (Cultural Resource Protection).
- F. The Iowa DOT shall curate archaeological materials acquired under this Agreement at a facility (preferably the State Archaeological Repository) meeting the standards of 36 CFR 79 and NRS Chapter 381, as appropriate. Collections curated from Federal lands will be subject to terms of the Archaeological Resources Protection Act (ARPA) permit.
- G. As the responsible federal agency, the FHWA shall conduct all formal consultation with the ACHP. Consultation with the ACHP shall follow procedures in 36 CFR 800 for consulting with the ACHP.

IV. Government-to-Government Consultation with Tribes

- A. The FHWA shall retain ultimate responsibility for complying with all federal requirements pertaining to government-to-government consultation with Tribes pursuant to the NHPA. Notwithstanding any other provision of this stipulation, the FHWA shall honor the request of any Tribe for government-to-government consultation regarding a project covered by this Agreement.
- B. The FHWA has delegated the initiation of tribal consultation to the Iowa DOT unless individual Tribe or Nation does not agree to these alternate procedures.
- C. In accordance with 36 CFR 800.3(f)(2), the Iowa DOT and FHWA will make a reasonable and good faith effort to identify and invite Tribes and Nations that might attach religious and cultural significance to historic properties in the area of potential effects to be consulting parties (See Appendix A).
- D. Iowa DOT shall ensure that consultation with interested Tribes is initiated early in the project planning process to identify cultural, confidential, or other concerns, and to allow adequate time for consideration.
- E. Iowa DOT shall ensure that consultation continues with interested Tribes throughout the Section 106 review process prescribed by this Agreement whenever such Tribes express a concern about a project or about historic properties that may be affected by a project.

V. Participation of Other Consulting Parties and the Public

A. In addition to the previously named consulting parties, the following agencies, groups and individuals may be identified as “consulting parties,” (in accordance with Section 800.3(c-f) and current federal transportation legislation and regulations) and can be involved as “participating or cooperating agencies” for some projects as situations dictate. These additional consulting parties may be identified by the FHWA, Iowa DOT, or SHPO, or they will be considered if they send a letter of request:

1. Designated representatives of local (city or county) units of government, such as the county board of supervisors, county or city engineers, certified local governments, historic preservation commissions, historical societies or other executive groups with jurisdiction are entitled to participate in consultation.
2. Private associations, groups, or individuals having an interest by reason of expertise in the subject area or by reason of ownership or affiliation with a historic property likely to be affected by projects may be invited to be consulting parties upon request.

B. Public Involvement

1. Section 800.2(d) states that the views of the public are essential to informed Federal decision making in the Section 106 process. Public involvement in planning and implementing projects covered by this Agreement shall be governed by the FHWA’s and Iowa DOT’s environmental compliance procedures. Public involvement and the release of information hereunder shall be consistent with 36 CFR 800.2(d)(1-2), 800.3(e), and 800.11(c)(1 and 3) as well as public involvement regulations in 23 CFR 771.111 and 23 CFR 450 and IC 22.7(2).
2. Project sponsors shall continue, through opportunities afforded by their current Public Involvement Procedures, to seek and consider the views of the public in a manner that reflects the nature and complexity of the project and its effects on historic properties, and the likely interest of the public regarding the effects on historic properties, to remain consistent with the intent of 36 CFR Part 800, as amended.
3. For those actions that do not routinely require public review and comment (e.g., certain activities classified as Categorical Exclusions under the National Environmental Policy Act (NEPA)), appropriate public involvement should be based on the specifics of the situation and commensurate with the type and location of historic properties, and the project’s potential impacts on them.

VI. Project Review

A. Projects with No Potential to Cause Effects

Some projects by their very nature have no potential to cause effects on historic properties. The signatories to this Agreement agree that the projects listed in this section have No Potential to Cause Effects. These are non-construction projects that do not lead to, or are part of, construction activity. These projects include: funding for planning studies, grants for training and education, corridor management plans, and research programs, publications, purchase of equipment or materials. All parties agree that the FHWA and the Iowa DOT have no further compliance obligations under this agreement or Section 106 of the National Historic Preservation Act for these projects.

B. Minor Projects

As part of Iowa DOT's annual report, Minor Projects information will be shared with all parties. The FHWA and Iowa DOT are responsible for all necessary project consultation for the Minor Projects program with Tribes and Nations, and other interested parties and the public, even where projects may require no SHPO review. Following the terms of this Agreement all parties agree that the FHWA and Iowa DOT determination of effect for Minor Projects listed in Appendix B is No Historic Properties Affected, and Minor Projects listed in Appendix C is No Adverse Effect.

1. Tier 1 (Automated Review)

(a) Minor Projects – Tier 1 – The scope of some projects limits their potential to cause effects. Historically, review of the projects (and work codes) listed in Tier 1 of Appendix B have yielded no adverse effects.

(b) The Iowa DOT shall screen Appendix B – Tier 1 projects using their environmental hotspots Geographic Information System (GIS). The environmental hotspots GIS contains previously recorded cultural resources within and near Iowa DOT right-of-way and uses a basic GIS geoprocessing tool (intersect) to identify where project geometry and previously recorded resources overlap (both are buffered). The system will in turn alert staff of a conflict. The hotspots layer is updated on a quarterly basis with new information. If the tool is not working then these projects will be screened by qualified staff.

(c) The signatories of this Agreement agree that unless a conflict with the environmental hotspots GIS or by staff is identified, the finding of effect for these projects will be No Historic Properties Affected, and they will not be reviewed individually by the SHPO beyond the annual report.

2. Tier 2 (Screened Review)

(a) These projects have potential to affect historic properties, but following appropriate screening by qualified OLE staff, may be determined to require no further SHPO review.

(b) For a project to be considered a Minor Project – Tier 2 it must meet ALL the following requirements:

(1) The project must be a stand-alone project and not part of a larger project that may have an unknown potential to cause effects to cultural resources; and

(2) The project is on a transportation facility within existing right of way or with minor right of way acquisition (such as the small parcels needed at the corners of intersection improvements, e.g. 2 acres or less), culvert extensions, ADA projects, or other projects listed in Appendices B & C; and

(3) The project has no known public controversy based on historic preservation issues; and

(4) A review of the project by the Iowa DOT cultural resources staff results in a finding of No Historic Properties Affected for projects listed in Appendix B or a finding of No Adverse Effect to Historic Properties for projects listed in Appendix C.

(c) Minor Projects – Tier 2 can fall into two categories: those with or those without cultural resource investigations.

(1) Minor Projects – Tier 2 with No Cultural Resource Investigations Required, when one or more of the qualifying criteria in Appendix B are applicable these projects will not be reviewed by the SHPO on a case by case basis, but will be reviewable through the annual report provided under this Agreement.

(2) Minor Projects – Tier 2 with Cultural Resource Investigations, when a cultural resource investigation is completed and no cultural resources are located within the direct or indirect Area of Potential Effects or a historic property is identified, but the Iowa DOT determines that either there are no effects to historic properties or that the effects are Not Adverse as defined in Appendix C, the project will be treated as a Minor Project. A copy of the cultural resources survey report will be sent to the SHPO for their files. The SHPO will acknowledge receipt by issuing a Review and Compliance number to the Iowa DOT, but no review will be needed. When a cultural resource investigation

has been completed and one or more cultural resource is located within the direct or indirect Area of Potential Effects, the project will not be treated as a Minor Project and will then follow the standard Section 106 process either in accordance with Stipulation VI of this Agreement or with 36 CFR 800.

C. Project Reviews – All Other Projects

FHWA, Iowa DOT, Iowa SHPO, and ACHP agree that review of all remaining projects, except for those listed in Stipulation VI.A, and VI.B will be completed in accordance with 36 CFR 800 and the NHPA where applicable. Iowa DOT may initiate and carry out the steps of the process on behalf of FHWA as directed in Stipulation I. Should the parties choose to they may use the Standard Treatments offered in Appendix D.

VII. EMERGENCY SITUATIONS

- A. For the purposes of this Agreement, emergencies are defined as occurrences that require expedited repairs to a transportation system or facility that are necessary to a) protect the life, safety, or health of the public; b) minimize the extent of damage to the transportation system or facilities; c) protect remaining transportation facilities; or d) restore essential traffic.
- B. These repairs can occur regardless of funding category, and regardless of declarations made by federal, state, or local agencies. The Iowa DOT may take immediate remedial action without waiting for comment if such action is necessary to prevent further escalation of the emergency by the circumstances causing it.
- C. If the emergency repair to an Iowa DOT managed transportation facility could affect historic properties, the Iowa DOT shall notify the SHPO, FHWA, Tribes, and OSA as appropriate within 48 hours, when feasible. If possible, the SHPO and any Tribe that may attach religious and cultural significance to historic properties likely to be affected will be given at least 72 hours to respond.
- D. For projects where the repair must be made within the first 30 days of the occurrence of the event that caused the emergency or the declaration of the emergency by an appropriate authority, the processing of environmental documentation will happen concurrently or after the fact. In these cases, the Iowa DOT will comply with the procedures in Stipulation VI of this Agreement to the extent possible, but the reviews will likely be conducted after the emergency work is completed.
- E. For projects taking longer than 30 days for repair, the Iowa DOT will comply with the procedures in Stipulation VI.

- F. Any written notification of an emergency action provided to the SHPO or Tribes and Nations shall be clearly and prominently marked as an emergency notification, and shall include a brief explanation of how the action meets the requirements for emergency as defined herein. The notice shall also include a brief description of the eligibility and/or significance of the resource(s) involved, the nature, effect, and anticipated effect of the emergency action on the resource(s), and the anticipated time frame available for comment.

VIII. POST-REVIEW DISCOVERIES

A. Planning for Subsequent Discoveries

1. If unusual circumstances, such as the possible existence of historic properties under existing pavement or structures, prevent completion of the Iowa DOT's identification efforts in accordance with Stipulation VI, the Iowa DOT shall develop a plan for discovery of such properties in consultation with the FHWA and SHPO. Implementation of the plan as originally proposed, or modified as necessary owing to the nature and extent of the properties discovered, will be in accordance with 36 CFR 800.4-6. The plan may be executed as a signed agreement between the FHWA, Iowa DOT and SHPO (and the ACHP should they choose to participate) as a means of expediting review time for assessment of effects to any historic properties.

B. Discoveries Without Prior Planning

1. If previously unidentified cultural resources, or unanticipated effects to historic properties, are discovered after the Iowa DOT has completed its review under this Agreement, that portion of the project will stop immediately as outlined in Iowa DOT Standard Specification 2102.03J and Iowa DOT PPM 500.17 (Cultural Resource Protection).
2. No further construction in the area of discovery will proceed until the requirements of 36 CFR 800.13 have been satisfied, including consultation with Tribes and Nations that may attach traditional cultural and religious significance to the discovered property.
3. The Iowa DOT will consult with the FHWA, SHPO as well as Tribes and Nations, as appropriate, to record, document, and evaluate the NRHP eligibility of the property and the project's effect on the property, and to design a plan for avoiding, minimizing, or mitigating adverse effects on the eligible property.
3. If the FHWA, the SHPO, or a Tribe or Nation fails to file an objection with the Iowa DOT within 72 hours to the Iowa DOT's plan for addressing the discovery, the Iowa DOT may carry out the requirements of 36 CFR 800.13 on behalf of the FHWA, and the ACHP does not need to be notified.

IX. TREATMENT OF HUMAN REMAINS

- A. The FHWA and Iowa DOT are committed and will make every effort to protect and preserve all human remains, including cemeteries, prehistoric graves, and isolated elements, during transportation construction and maintenance activities. Standard Specification 1107.18.D (2012.03J) stipulates that upon discovery of human remains during construction, including bone or other remains suspected to be human, work shall immediately cease in the area. If there is uncertainty as to whether remains are human, the OSA Bioarchaeology Program should be contacted to make the determination. The following steps are to be taken any time human remains are unearthed, or other artifacts associated with mortuary features are found during project construction or maintenance activities in Iowa.
1. Appropriate steps shall be taken to secure the site. No additional ground disturbance shall occur within a 100-foot buffer zone around the remains. All elements exposed must be left in place. Officials with the FHWA, the OSA Bioarchaeology Program (if not already notified), SHPO, and appropriate Tribes will be notified within 24 hours via email, fax, or telephone. Law enforcement officials and the State Medical Examiner (SME) must also be notified in accordance with Section 523I.316 of the Iowa Code. Law enforcement and/or SME will coordinate with OSA to establish the antiquity and ancestry or cultural affiliation as possible of the human remains. If ancestry or cultural affiliation cannot be determined, the remains shall be collaboratively reviewed by the FHWA, Iowa DOT, Iowa SHPO, OSA and the OSA-Indian Advisory Council to identify a best alternative for further analysis and reburial.
 2. If the human remains appear to be ancient (i.e. older than 150 years) the OSA Bioarchaeology Program shall have jurisdiction to ensure that the appropriate procedures in accordance with Chapters 263B and 716.5 of Iowa Code are observed. The Iowa Department of Public Health has authority over human remains less than 150 years old per Iowa Code Chapters 113.34, 144.34, 523I.316, and 716.5.
 3. If determined to be less than 150 years in age and of medico-legal significance, law enforcement and/or SME has jurisdiction.
 4. If determined to be ancient and of Native American ancestry, representatives of FHWA, OSA, SHPO, and appropriate Tribes and Nations will confer at the site to examine the discovery, determine the likely project impacts if left in place, and determine the most appropriate avoidance, minimization, or mitigation measure(s) for dealing with the discovery.

5. If determined to be ancient and of European American ancestry, representatives of FHWA, OSA, SHPO, and identifiable descendant community(ies) will confer and determine appropriate measures for avoidance, minimization or mitigation.
 6. If determined to be less than 150 years in age and of Native American ancestry but not of medico-legal significance, law enforcement and/or SME will be requested to confer with FHWA, OSA, SHPO, and appropriate Tribes concerning compliance with the Native American Graves Protection and Repatriation Act (NAGPRA).
 7. Before work can resume in the area of any unanticipated discovery, FHWA and Iowa DOT will determine the NRHP eligibility of the archaeological resource in consultation with SHPO, and other stakeholders as necessary.
- B. While FHWA does not have any responsibilities under NAGPRA because it neither owns lands in the state of Iowa nor does it act as a museum or institution as defined in NAGPRA, for projects governed by this PA, Iowa DOT is the responsible agency. The exception is if Native American human remains or funerary objects are discovered during an Iowa DOT project on lands owned by a federal agency, Iowa DOT will notify said agency and it shall have responsibility to comply with applicable federal and state laws. In all cases Iowa DOT will notify FHWA, OSA, and SHPO of all discoveries of Native American human remains or funerary objects.

X. ADMINISTRATIVE STIPULATIONS

A. Documentation

1. All documentation that supports findings and determinations made under this Agreement shall be consistent with 36 CFR 800.11, and any applicable guidelines.
2. Documentation prepared by local agencies or their consultants in support of such findings shall be submitted to the Iowa DOT for review and approval. The Iowa DOT shall not transmit to the FHWA or SHPO any documentation that has not been reviewed and approved by qualified OLE staff.
3. All documentation prepared under this Agreement shall be kept on record at the Iowa DOT and made available to consulting parties and the public at their request, consistent with applicable confidentiality requirements [as described in 36 CFR 800.11(c)].

B. Monitoring Implementation of this Agreement

1. All parties to this agreement may review activities carried out pursuant to this Agreement. The Iowa DOT shall facilitate this review by compiling specific

categories of information to document the effectiveness of the Agreement and by making this information available on an annual basis to all parties to this Agreement in the form of an annual report. Categories of information may include, but are not limited to, a summary of actions taken under the Agreement, including all findings and determinations, accomplishments, public objections, and inadvertent effects or foreclosures. The range and type of information included by the Iowa DOT in the report and the manner in which this information is organized and presented must be such that it facilitates the ability of the reviewing parties to assess accurately the degree to which the Agreement and its manner of implementation constitute an efficient and effective program alternative under 36 CFR 800, and to determine whether this Agreement should remain in effect, and if so, whether and how it could be improved through appropriate amendment.

2. The Iowa DOT shall submit the annual report to all parties to this Agreement no later than six (6) months following the end of the state fiscal year (June 30). All parties are encouraged to review and provide comments and feedback on the annual report.
3. The Iowa DOT, FHWA, and SHPO will continue to schedule regular Cultural Interchange Team meetings and will use these meetings as a forum to evaluate the Agreement, to suggest revisions to its provisions, and to evaluate the quality of the resource identification and protection activities carried out under the Agreement.
4. If any signatory party determines that the Iowa DOT is not meeting its responsibilities under this Agreement, that signatory shall inform the Iowa DOT of its concern(s) and suggest measures to be taken to resolve the matter.

C. Resolving Objections to Implementation of this Agreement

1. Should any signatory party object in writing to FHWA regarding the manner in which the terms of this Agreement are carried out, FHWA will immediately notify the other signatory parties of the objection and proceed to consult with the objecting party to resolve the objection. FHWA will honor the request of any signatory party to participate in the consultation and will take any comments provided by such parties into account. The FHWA shall establish a reasonable time frame for such consultations.
2. Should any signatory party object to Iowa DOT or FHWA determination of eligibility, FHWA will submit the determination to the Keeper of the National Register of Historic Places for resolution.

3. If the objection is resolved through consultation, FHWA may authorize the disputed action to proceed in accordance with the terms of such resolution.
4. If after initiating such consultation, FHWA determines that the objection cannot be resolved through consultation, FHWA shall forward all documentation relevant to the objection to the ACHP and other signatory parties, including FHWA's proposed response to the objection. Within 30 days after receipt of all pertinent documentation, ACHP shall exercise one of the following options:
 - i. Advise FHWA that ACHP concurs in FHWA's proposed response to the objection, whereupon FHWA will respond to the objection accordingly; or
 - ii. Provide FHWA with recommendations, which FHWA shall take into account in reaching a final decision regarding its response to the objection; or
 - iii. Notify FHWA that the objection will be referred for comment pursuant to 36 CFR 800.7(a)(4) and proceed to refer the objection and comment. In this event, FHWA shall ensure that the Agency Official is prepared to take the resulting comments into account in accordance with 36 CFR 800.7(-)(4).
5. Should ACHP not exercise one of the foregoing options within 30 days after receipt of all pertinent documentation, FHWA may assume ACHP's concurrence in its proposed response to the objection.
6. FHWA shall take into account any ACHP recommendation or comment and any comments from the other signatory parties to this Agreement in reaching a final decision regarding the objection. FHWA's responsibility to carry out all actions under this Agreement that are not the subjects of the objection shall remain unchanged.
7. FHWA shall provide all other signatory parties to this Agreement with a written copy of its final decision regarding any objection addressed pursuant to this Stipulation.
8. FHWA may authorize any action subject to objection under this Stipulation to proceed, provided the objection has been resolved in accordance with the terms of this Stipulation.
9. At any time during implementation of the terms of this Agreement, should any member of the public raise an objection in writing pertaining to such implementation to any signatory party to this Agreement, that signatory party shall immediately notify FHWA. FHWA shall immediately notify the other

signatory parties in writing of the objection. Any signatory party may choose to comment on the objection to FHWA. FHWA shall establish a reasonable time frame for this comment period. FHWA shall consider the objection, and in reaching its decision, FHWA will take all comments from the other parties into account. Within 15 days following closure of the comment period, FHWA will render a decision regarding the objection and respond to the objecting party. FHWA will promptly notify the other parties of its decision in writing, including a copy of the response to the objecting party. FHWA's decision regarding resolution of the objection will be final. Following the issuance of its final decision, FHWA may authorize the action subject to dispute hereunder to proceed in accordance with the terms of that decision.

D. Amendment

1. Any signatory party to this Agreement may at any time propose amendments, whereupon all signatory parties shall consult to consider such amendment. This Agreement may be amended only upon written concurrence of all signatory parties.
2. Each attachment to this Agreement may be individually amended through consultation of the signatory parties without requiring amendment of the Agreement, unless the signatory parties through such consultation decide otherwise.

E. Termination

1. Any signatory party may terminate this agreement. If this Agreement is not amended as provided for in Stipulation X.D, or if any signatory party proposes termination of this Agreement for other reasons, the party proposing termination shall notify the other signatory parties in writing, explain the reasons for proposing termination, and consult with the other parties for no more than 30 days to seek alternatives to termination.
2. Should such consultation result in an agreement on an alternative to termination, the signatory parties shall proceed in accordance with that agreement.
3. Should such consultation fail, the signatory party proposing termination may terminate this Agreement by promptly notifying the other parties in writing.
4. Should this Agreement be terminated, the FHWA would carry out the requirements of 36 CFR Part 800 for individual projects.
5. Beginning with the date of termination, the FHWA shall ensure that until and unless a new Agreement is executed for the actions covered by this Agreement, such projects shall be reviewed individually in accordance with 36 CFR 800.4-800.6.

F. Confidentiality

All parties to this Agreement acknowledge that information about historic properties, potential historic properties, or properties considered historic for purposes of this Agreement are or may be subject to the provisions of Section 304 of NHPA and the Iowa Code 263B.10 and 22.7(20) (in coordination with the State Archaeologist as appropriate). These statutes allow the Iowa DOT to withhold from disclosure to the public, information about the location, character, or ownership of a historic resource if the Iowa DOT determines that disclosure may 1) cause a significant invasion of privacy; 2) risk harm to the historic resource; or 3) impede the use of a traditional religious site by practitioners. Having so acknowledged, all parties to this Agreement will ensure that all actions and documentation prescribed by this Agreement are, where necessary, consistent with the above noted requirements.

G. Duration of Agreement

This Agreement shall remain in effect for a period of five (5) years after the date it takes effect, unless it is terminated prior to that time. Six months prior to the conclusion of the five-year period, the Iowa DOT will notify all parties in writing. If there are no objections from the signatory parties, the term of the Agreement will automatically be extended for an additional three years up to a limit of 21 years. If any party objects to extending the Agreement, or proposes amendments, the Iowa DOT will consult with the parties to consider amendments or other actions to avoid termination.

Execution and implementation of this agreement evidence that the FHWA has delegated certain Section 106 responsibilities to the Iowa DOT, and has afforded the ACHP a reasonable opportunity to comment on the Program and its individual projects in Iowa; that the FHWA has taken into account the effects of the program and its individual projects on historic properties, and that the FHWA has complied with Section 106 of the NHPA and 36 CFR 800 for the Program and its individual projects.

SIGNATORIES:

FEDERAL HIGHWAY ADMINISTRATION

By: Karen A Bobo Date: 4/18/2018
Karen Bobo, Iowa Division Administrator

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: John M. Fowler Date: 5/4/18
John Fowler, Executive Director

IOWA STATE HISTORIC PRESERVATION OFFICER

By: Steve King Date: 18 APR 2018.
Steve King, Deputy SHPO

IOWA DEPARTMENT OF TRANSPORTATION

By: Mitchell Dillavou Date: 4/17/18
Mitchell Dillavou, Highway Division Director


CONCURRING PARTY:

OTOE-MISSOURIA TRIBE

By:  Date: 4-16-18
Elsie Whitehorn, Tribal Historic Preservation Officer

CONCURRING PARTY:

UNIVERSITY OF IOWA OFFICE OF THE STATE ARCHAEOLOGIST

By:  Date: 4-17-18
John Doershuk, State Archaeologist and Director

Appendix A: List of Tribes

The FHWA and Iowa DOT identified and invited the following Tribes to be consulting parties to this Agreement and any joint FHWA and Iowa DOT projects.

Citizen Potawatomi Nation
1601 S. Gordon Cooper Dr.
Shawnee, Oklahoma 74801

Kickapoo Traditional Tribe of Texas
HC 1, Box 9700
Eagle Pass, TX 78852

Delaware Nation
P. O. Box 825
Anadarko, OK 73005

Lower Sioux Indian Community
39527 Res. Hwy 1
P. O. Box 308
Morton, MN 56270

Delaware Tribe of Indians
170 NE Barbara
Bartlesville, OK 74006

Miami Tribe of Oklahoma
202 S. Eight Tribes Trail
Miami, OK 74355

Flandreau Santee Sioux
P. O. Box 283
Flandreau, SD 57028

Osage Nation
627 Grandview
P. O. Box 779
Pawhuska, Oklahoma 74056

Ho-Chunk Nation
W9814 Airport Rd.
P. O. Box 677
Black River Falls, WI 54615

Omaha Tribe of Nebraska
P. O. Box 368
Macy, NE 68039

Iowa Tribe of Kansas and Nebraska
3345 Thrasher Road
White Cloud, KS 66094

Otoe-Missouria Tribe
8151 Hwy 177
Red Rock, OK 74651

Iowa Tribe of Oklahoma
R.R.1, Box 721
Perkins, OK 74059

Pawnee Nation of Oklahoma
P. O. Box 470
Pawnee, OK 74058

Kickapoo Tribe in Kansas
1107 Goldfinch Road
Horton, KS 66349

Peoria Tribe of Indians of Oklahoma
118 S. Eight Tribes Trail
P. O. Box 1527
Miami, Oklahoma 74355

Kickapoo Tribe of Oklahoma
407 N. Hwy 102
P. O. Box 70
McCloud, OK 74851

Ponca Tribe of Nebraska
P. O. Box 288,
Niobrara, NE 68760

Ponca Tribe of Oklahoma
20 White Eagle Drive
Ponca City, OK 74601

Prairie Band Potawatomi Nation
16281 Q Road
Mayetta, Kansas 66509-8970

Prairie Island Indian Community
5636 Sturgeon Lake Road
Welch, MN 55089

Sac and Fox Tribe of the Mississippi in
Iowa
349 Meskwaki Road
Tama, IA 52339

Sac and Fox Nation of Missouri in Kansas
305 N. Main Street
Reserve, KS 66434-9723

Sac and Fox Nation in
Oklahoma
920883 S. Hwy 99
Stroud, OK 74079

Santee Sioux Nation
108 Spirit Lake Avenue West
Niobrara, NE 68760-7219

Shakopee Mdewakanton Sioux Community
2330 Sioux Trail N.W.
Prior Lake, MN 55372

Sisseton Wahpeton Oyate
P. O. Box 509
Agency Village, SD 57262

Spirit Lake Tribe
P. O. Box 359
Fort Totten, ND 58335

Three Affiliated Tribes - Mandan, Hidatsa &
Arikara
404 Frontage Road,
New Town, ND 58763

Upper Sioux Community
P. O. Box 147
5722 Traverse Lane
Granite Falls, MN 56241-0147

Winnebago Tribe of Nebraska
100 Bluff Street
P. O. Box 687
Winnebago, NE 68071

Yankton Sioux Tribe
P. O. Box 248
Marty, SD 57361-024

Appendix B: Minor Projects Resulting in No Historic Properties Effected

Tier 1 – Automated Projects

A. Work Types (Code):

1. Engineering Inspection (6022-6024)
2. Bridge Inspection (6041 & 9033)
3. Bridge Deck Overlay, Grooving or Joint Repair (2521, 2541, 2542)
4. Traffic Signs and Messaging (5062 & 5063)
5. Traffic Signals and Markings (5041, 5051, 5052, 5061)
6. Railroad Crossings and Signals (6031 & 5032)
7. Mowing and Fencing (4511 & 3561)
8. Landscaping and Tree Planting (4531 & 4541)
9. Traffic, Lighting, and Safety Review (6061 & 5021)
10. ITS and Fiber Optic Insulation (5071 & 5072)
11. Materials Purchase including Asphalt (6511, 6512, 6513, 6514, 6515, 6521, 6522)
12. Pavement grooving and Rumble Strips (1541, 1555)
13. Microsurfacing & Slurry Seal (1554 & 1552)

B. Environmental Hotspots Geographic Information Systems

1. The Iowa DOT assigns a geospatial limit to projects, this system cross-checks (geoprocessing function - intersect) the Environmental Hotspots data with a project's geospatial footprint. This basic geoprocessing function can be performed and set to notify the project manager when a conflict is present. When a conflict is identified the project manager will provide appropriate review. Periodic review of these projects can provide a check to the system.

Tier 2 – Screened Projects

A. Projects Involving Ground Disturbance

1. One or more of the following Qualifying Criteria must be met for a project to be considered a Minor Project exempted from SHPO review:
 - a. The Area of Potential Effect (APE) is entirely contained within the existing public right-of-way, and no historic properties are known to be present within or near the APE;
 - b. The APE is entirely contained within areas that can be documented as being profoundly disturbed and no historic properties are known to be present within the APE. *Profound disturbance* as it relates to the APE occurs when a past activity or activities have physically altered the *three-dimensional* APE of a project *in its entirety* to the point where there is no potential for an archaeologically significant property to remain;
 - c. The APE was surveyed for cultural resources after 1989 and determined to contain none of significance and has received SHPO concurrence;

- d. The APE is documented as exhibiting slope that exceeds 15 percent, and no historic properties are known to be present within or near the APE;
 - e. The APE measures two acres or less, and is entirely contained by soils mapped as historic alluvium or post-settlement alluvium, and no historic properties are known to be present within or near the APE;
 - f. The project will include the removal and or installation of utilities or facilities whereby a utility trench can be appropriately assessed. This allowance accounts for the existing facility plus three feet. No historic properties are known to be present within or near the APE;
2. Examples of Ground Disturbance Projects when one or more Qualifying Criteria are met:
 - a. Resurfacing, restoration, and rehabilitation, including minor roadway widening, milled rumble strips, patching, intersection modifications
 - b. Bridge replacements, and rehabilitation involving substructure replacements, widening, pier replacements, stabilizations, approach repair
 - c. Culvert extensions, new build, replacements, or repairs
 - d. Grading, including slide repair, debris removal, fencing, rip-rap, sub-drains, median work
 - e. Traffic safety improvements, including signing, lighting, guardrails, railroad warning devices, traffic signals, pavement marking, utility repairs
 - f. Installation of bicycle and pedestrian facilities
 - g. Noise wall installation
 - h. Highway rest area or weigh scale improvements
 - i. Landscaping, including tree or shrub planting, seeding, mowing, clearing and grubbing, vegetation management
 - j. Erosion control, silt fencing
 - k. Maintenance measures, including scour filling, sealing, deposit removal, stabilization measures
- B. Projects Involving Built Environment for properties (structures, buildings, objects, sites, districts) not On or Eligible for the National Register
1. One or more of the following Qualifying Criteria must be met for the project to be considered a Minor Project exempted from SHPO review:
 - a. Work within the existing alignment including exposed brick streets and no historic properties are known to be present within the APE;
 - b. Routine maintenance, stabilization, and protective activities and no historic properties are known to be present within the APE;
 - c. Road surface modifications and rehabilitation and no historic properties are known to be present within the APE;
 2. Examples of projects involving the Built Environment when one or more Qualifying Criteria are met:

- a. Removal of accumulated debris – which includes the removal of harmful or otherwise undesirable deposits of dirt, stains, coatings, efflorescence (salts) and pollutants in a manner that does the least amount of harm to the surface being treated;
- b. Routine maintenance such as mending the material of a structure or object;
- c. Limited paint removal, and re-application;
- d. Electrical work, plumbing work, heating and cooling work which are not visible from the exterior of the building;
- e. Replacement of deteriorated stairs;
- f. Replacement of siding, porches, doors, roofs, windows, balustrades, trim
- g. Caulking;
- h. Floor refinishing;
- i. Interior wall replacement, including crack repair;
- j. Anchoring of masonry walls and floor systems so long as anchors are imbedded and concealed from exterior view;
- k. Reconstruction- repair of parapets, chimneys and cornices;
- l. Temporary bracing or shoring as part of stabilizations or foundations;
- m. Repair to or replacement of ceiling systems;
- n. Brick street repair not in a historic district on or eligible for the National Register;
- o. Stabilization –including acts or processes of applying measures designed to reestablish a weather resistant structure and restoring the structure stability of an unsafe or deteriorated bridge or culvert while maintaining the essential form as it exists at present. These tasks include reinforcement of load bearing members accomplished in such a manor so as to detract as little as possible from the property's original appearance, and arresting the deterioration of material that might otherwise be subject to structural failure;
- p. Protection – involving the least degree of intervention and, being preparatory to other work, includes such measure as installation of temporary fencing, emergency utility repairs, security lighting, protective sheeting, alarm systems and other short-term protective measures, and seasonal debris removal, without causing damage to historic materials;

Appendix C: Minor Projects Resulting in No Adverse Effect on Historic Properties

- A. One or more of the following Qualifying Criteria must be met for the project to be considered a Minor Project exempted from SHPO review:
 1. Routine maintenance, stabilization, and protective activities on NRHP listed or eligible structures, activities will follow *The Secretary of Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings*, and *The Secretary of Interior's Standards for Treatment of Historic Properties with Guidelines for the Treatment of Cultural Landscapes*;
 2. Road surface modifications and rehabilitation with low vibration potential to adjacent historic properties or moderate vibration potential with defined protective measures included in construction plan notes;

- B. Examples of projects involving the Built Environment when one or more Qualifying Criteria are met:
 1. Removal of accumulated debris – which includes the removal of harmful or otherwise undesirable deposits of dirt, stains, coatings, efflorescence (salts) and pollutants in a manner that does the least amount of harm to the surface being treated;
 2. Routine maintenance – which includes historic construction material through treatments such as mending the material of a structure or object where materials are kept **in-kind** such as;
 - a. Limited paint removal, and re-application;
 - b. Electrical work, plumbing work, heating and cooling work which are not visible from the exterior of the building;
 - c. Replacement of deteriorated stairs;
 - d. Replacement of siding, porches, doors, roofs, windows, balustrades, trim
 - e. Caulking;
 - f. Floor refinishing;
 - g. Interior wall replacement, including crack repair;
 - h. Anchoring of masonry walls and floor systems so long as anchors are imbedded and concealed from exterior view;
 - i. Reconstruction- repair of parapets, chimneys and cornices;
 - j. Temporary bracing or shoring as part of stabilizations or foundations;
 - k. Repair to or replacement of ceiling systems;
 - l. Brick street repair
 - m. Stabilization –including acts or processes of applying measures designed to reestablish a weather resistant structure and restoring the structure stability of an unsafe or deteriorated bridge or culvert while maintaining the essential form as it exists at present. These tasks include reinforcement of load bearing members accomplished in such a manor so as to detract as little as possible from the property's original appearance, and arresting the deterioration of material that might otherwise be subject to structural failure;

- n. Protection – involving the least degree of intervention and, being preparatory to other work, includes such measure as installation of temporary fencing, emergency utility repairs, security lighting, protective sheeting, alarm systems and other short-term protective measures, and seasonal debris removal, without causing damage to historic materials;

Appendix D: Standard Treatments

I. Standard Treatments

The use of standard treatments provides a means for all parties to establish methods for treatment of specific categories of historic properties in Iowa according to 36 CFR 800.14(d). The following standard treatments will be followed for types of historic properties identified below. A specific treatment plan will be tailored to each historic property on a case-by-case basis. All treatment plans will be developed by a person or persons meeting or exceeding the *Secretary of the Interior's Professional Qualification Standards*. Upon development of treatments for a specific historic property, a plan will be provided by the Iowa DOT, to the FHWA, SHPO, and other consulting parties for a period of 30 days from receipt. At the end of that period comments will be collected by the FHWA and Iowa DOT and considered for entry into the final treatment plan.

A. Standard treatments for archaeological sites:

1. The treatment plan for archaeological sites will include but not be limited to data recovery plan that:
 - a. Is consistent with the *Secretary of the Interior's Standard's for the Treatment of Historic Properties* and the *Advisory Council on Historic Preservation's; Section 106 Archaeology Guidance* (<http://www.achp.gov/archguide/>) and the Association of Iowa Archaeologists guidelines (<http://aiarchaeologist.org/guidelines/>).
 - b. Discusses what is known about the site from previous research;
 - c. Addresses research questions important to the advancement of knowledge regarding this type of property within appropriate contexts;
 - d. Defines methodology of the data recovery, and post-field analysis and reporting;
 - e. Describes post-field data management and curation plans;
 - f. Prepares for discovery of human remains;
 - g. Provides for a report that meets the Department of the Interior's *Format Standards for Final Reports of Data Recovery Programs*;
2. A timeline of data recovery including an invitation to consulting parties to visit the site; upon the SHPO's final site visit, project completeness and concurrence will be discussed;
3. A site management plan will be provided to the SHPO following the final site visit whereby concurrence with the site treatment will be sought;
4. A proposal to involve the public where appropriate or other appropriate measures for public presentation;
5. The data recovery report will address the National Register eligibility status of any remaining portions of the site;
6. Acceptance of the final data recovery report by the SHPO will conclude the treatment plan, barring any uncompleted plan tasks.

- B. Standard treatments for the built environment (structures, buildings, objects, sites, districts):
 - 1. The treatment plan for the historic property will include but not be limited to:
 - a. Complete documentation of the historic property; including appropriately completed site forms;
 - a. All documentation will be consistent with the "*Iowa Historic Property Study*" series for the appropriate property type (e.g. Bridge, House, Barn);
 - b. All documentation will be consistent with the *Secretary of the Interior's Standards for Architectural and Engineering Documentation*;
 - c. The SHPO's review of final photos and field measurements so that the project may be allowed to proceed during report writing and printing.
 - d. A proposal for development of a public benefit document or other appropriate measures for public presentation;